

**RESOLUTION NO: 2015-04-07**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS, AMENDING AN AGREEMENT WITH C. MILLER DRILLING COMPANY TO REPLACE THE PUMP AND MOTOR AT WELL #7; REPLACE APPROXIMATELY 525 FT OF PIPE WITH 4" PIPE; AND 525 FT. OF WIRE WITH DOUBLE INSULATED 4-3 W/GRND; AND OTHER ACCESSORIES AS NEEDED FOR AN AMOUNT NOT TO EXCEED \$33,000.00; AMENDING RESOLUTION NO: 2015-03-31 PASSED ON MARCH 31<sup>ST</sup>, 2015, AND REPEALING ALL RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT THEREWITH.**

THE STATE OF TEXAS                   §  
COUNTY OF RUSK                   §

WHEREAS, Well #7 ceased water production on Saturday afternoon on March 21<sup>st</sup>, 2015 requiring Wells #5 and #6 to increase production to cover the loss of Well #7; and

WHEREAS, this temporary arrangement to provide water to the citizens requires the expeditious repair or replacement of Well #7 to avoid the possibility of water rationing if something happens to one of the other wells; and

WHEREAS, it is likely that the total cost of pulling the existing re-conditioned pump, repairing it and replacing it will not be appreciably less than replacing the pump and motor with a new one; and

WHEREAS, protection of the investment in a new motor, pump, wiring and replacing the pipe with a smaller size to allow room for the pump motor wire will increase the chances of fewer problems in the long run; and

WHEREAS, C. Miller Drilling Company has provided a suitable bid to perform this work and is available to replace the pump and motor on Wednesday if the revised contract is approved;

***NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS THAT:***

The bid tendered by C. Miller Drilling (as it appears in EXHIBIT A of this RESOLUTION) is approved and integrated into a contract as shown in EXHIBIT B of this RESOLUTION; and

The Mayor of the City of Overton is authorized to execute said contract as shown in EXHIBIT B upon passage of this RESOLUTION; and

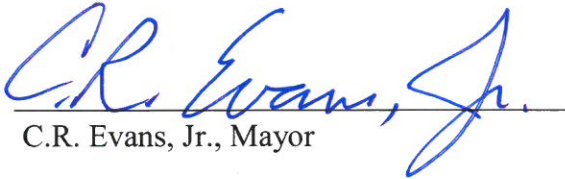
That all Resolutions or parts of Resolutions in conflict herewith are hereby repealed; and

Staff is directed to make necessary adjustments in budgeted appropriations of the last amended 2014-15 Fiscal Year Budget, to wit, reduce the appropriation in account 54-851-5036 Materials and supplies by

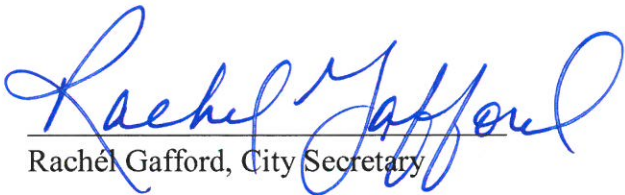
\$33,000 and increase the appropriations of a new line item account "54-851-5702 Replacement of Water Pump at Well #7", in the Water Capital Improvement Fund (54), by a like amount, with such change to be authorized and approved in the 2<sup>nd</sup> budget amendment for the 2014-15 Fiscal Year.

**APPROVED AND RESOLVED BY THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS ON THIS 7<sup>th</sup> DAY OF APRIL, 2015.**

CITY OF OVERTON

  
C.R. Evans, Jr., Mayor

ATTEST:

  
Rachel Gafford, City Secretary

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Blake Thompson, City Attorney

**2C. MILLER DRILLING CO.**

"Water Wells Done Right"

7355 East SH 154 ~ Winnsboro, TX 75494 ~ USA  
Phone 903-725-6524 ~ Fax 903-725-3647

4-03-15

Paul,

Per our conversation on the phone this would be the actual invoiced price of material and labor. This does not include jetting or a camera survey.

Mobilization of Rig and Crew.....	\$ 395.00
Estimated General Labor 4@\$265.....	\$ 1060.00
Estimated Rig Time 10@ \$375.....	\$ 3750.00
Franklin 50 HP 460 V Motor.....	\$ 7277.00
Groundfos 300S500-13 Pump End.....	\$ 7628.00
525 Ft of Double Insulated 4-3 w/Grnd.....	\$ 5250.00
Misc. Supplies SS Bands, Tape, Splice Kit, Cl2, Ect.	\$ 550.00
24 Joints 4" Hangpipe.....	\$ 8760.00
2 4" DI Line Checks.....	\$ 890.00
500' of 1/4" Plastic Air Line.....	\$ 310.00
<b>Total Materials and Labor :.....</b>	<b>\$ 35,870.00</b>
<b>Credit allowed for used 5" Pipe.....</b>	<b>\$ -3,500.00</b>
<b>Total if we receive used pipe.....</b>	<b>\$ 32,370.00</b>

**EXHIBIT B**

**Agreement between City of Overton, Texas (Owner)  
and C. Miller Drilling Co. (Contractor) for  
Replacement of Well #7 Water Pump**

**AGREEMENT** made as of the 8<sup>th</sup> day of April in the year 2015.

**BETWEEN** the Owner: City of Overton, Texas  
1200 S. Commerce Street,  
Overton, Texas 75684

and the Contractor C. Miller Drilling Company  
7355 East SH 154  
Winsboro, Texas 75494

The Project is described as: Pull existing pump and replace with new water pump and Related Equipment at Well #7 in the City of Overton.

For and in consideration of the mutual terms, conditions and covenants of this Agreement and all accompanying documents between Owner and Contractor, the receipt and sufficiency of which are hereby acknowledged, Owner and Contractor agree as follows:

**ARTICLE 1 THE CONTRACT DOCUMENTS**

The Contract Documents consist of this Agreement and Contractor Bid (ATTACHMENT A). In the event of any conflict within or between Contract Documents, this Agreement shall have precedence over any others and the terms hereof shall prevail over any other terms.

The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or verbal.

**ARTICLE 2 THE WORK OF THIS CONTRACT**

CONTRACTOR shall fully execute the Work, and any individual part or portion of the Work, described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

The Work of this Contract shall be as enumerated in Exhibit "A," attached hereto and incorporated herein by reference for all purposes. Work to be commenced, prosecuted, and completed in accordance with the timelines and requirements delineated in this Agreement.

**ARTICLE 3 ISSUANCE OF NOTICE TO PROCEED; DATE OF FINAL COMPLETION.**

The Date of Execution of this Contract by Contractor and Owner shall constitute the Owner's Notice to Proceed.

CONTRACTOR shall achieve Final Completion of the Work no later than 30 days from the date of Commencement of Work.

**EXHIBIT B**

**ARTICLE 4 CONTRACT PRICE**

OWNER shall pay Contractor the Contract Sum in current funds for Contractor's performance of the Contract. The Contract Sum shall be an amount not to exceed **THIRTY-THREE THOUSAND DOLLARS (\$33,000)** subject to additions and deductions as provided in the Contract Documents.

The Contract Sum is based upon the following unit prices which are described in the Contract Documents and are hereby accepted by Owner:

**SPECIFICATION OF WORK**

<u>DESCRIPTION</u>	<u>Unit Price</u>	<u>Extension</u>
Mobilization of Rig and Crew	\$ -	\$ 395.00
(4) Estimated General labor	\$ 265.00 per day	\$ 1,060.00
(10) estimated rig time	\$ 375.00 / hr	\$ 3,750.00
Franklin 50 HP 460 V Motor	\$ 7,277.00	\$ 7,277.00
Groundfos 300S500- 13 Pump	\$ 7,628.00	\$ 7,628.00
525 Ft of Double Insulated 4-3 w/Grnd	\$ 5,250.00	\$ 5,250.00
Misc. Supplies SS Bands, Tape, Splice Kit, C12, etc	\$ -	\$ 550.00
(24) Joints 4" Hang pipe	\$ 365.00	\$ 8,760.00
2 4" DI Line Checks	\$ 445.00	\$ 890.00
500 ft of 1/4" Plastic Air Line	\$ -	\$ 310.00
<b>Total Materials and Labor</b>		<b>\$ 35,870.00</b>
<b>Less Credit allowed for used 5" pipe</b>		<b>\$ (3,500.00)</b>
<b>Total</b>		<b>\$ 32,370.00</b>

The Contract Amount will be deemed to include for all unit price work an amount equal to the sum of the established unit price for each separately identified item of unit price work times the estimated quantity of each item as indicated in the Proposal. The estimated quantities of items of unit price work are not guaranteed and are solely for the purpose of determining an initial Contract Amount. Determinations of the actual quantities and classifications of unit price work performed by the CONTRACTOR will be made by Owner's Representative. Owner's Representative will review with the CONTRACTOR the preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise).

**OWNER'S RESPONSIBILITIES:**

OWNER to provide on a timely basis and on the schedule required by CONTRACTOR free and full access to the work site.

**ARTICLE 5 PAYMENT**

Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by Owner to Contractor when:

CONTRACTOR has fully performed the Contract except for Contractor's responsibility to correct Work, and to satisfy other requirements, if any, which extend beyond final payment; and made no later than thirty (30) days after receipt of invoice from CONTRACTOR. In no event shall final payment be required to be made prior to thirty (30)

## **EXHIBIT B**

days after all Work on the Contract has been fully performed. Defects in the Work discovered prior to final payment shall be treated as non-conforming Work and shall be corrected by CONTRACTOR prior to final payment, and shall not be treated as warranty items.

### **ARTICLE 6 INSURANCE REQUIREMENTS:**

All insurance required by the Contract Documents shall be obtained from *solvent* insurance companies that are duly licensed by the State of Texas and authorized to issue insurance policies for the limits and coverages required by the Contract Documents. The bonds shall be in a form acceptable to the OWNER and shall be issued by a surety which complies with the requirements of Art. 7.19-1, Texas Insurance Code (1997) and which is otherwise acceptable to the OWNER.

#### **Required Policies include:**

- **Workers' Compensation and Employers' Liability Insurance:**
- **Commercial General Liability Insurance.**

### **ARTICLE 7 CONTRACTOR'S GENERAL WARRANTY AND GUARANTEE:**

The CONTRACTOR warrants and guarantees to the OWNER that all Work will be performed in a good and workmanlike manner in accordance with the Contract Documents and will not be defective. The CONTRACTOR's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification or improper maintenance or operation by persons other than the CONTRACTOR, Subcontractors or Suppliers; or
2. normal wear and tear under normal usage; or
3. defects or damage to or caused by equipment purchased or supplied by Contractor but which carries its own manufacturer's warranty in which case liability would fall back on the manufacturer to correct.

If any Work is found to be defective, excluding items subject to 7.3 above, the CONTRACTOR shall promptly, without cost to the OWNER and in accordance with the OWNER's written instructions:

1. correct such defective Work, or, if it has been rejected by the OWNER, remove it from the site and replace it with Work that is not defective, and
2. satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom.

### **ARTICLE 8 INDEMNITY**

To the fullest extent permitted by law, CONTRACTOR shall defend, indemnify and hold harmless the OWNER, its Project Manager, and all employees, agents and officials of OWNER from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or other dispute resolution costs) arising out of or resulting from the performance of the Work, provided that any such claim, cost, loss or damage:



**EXHIBIT B**

1. is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and
2. is caused in whole or in part by any negligent act or omission of the CONTRACTOR, any Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any negligence or omission of a person or entity indemnified hereunder or whether liability is imposed upon such indemnified party by laws and regulations regardless of the negligence of any such person or entity.
3. The indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, or compensation or benefits payable by or for the CONTRACTOR or any such Subcontractor, Supplier or other person or organization under workers' compensation acts, disability benefit acts or other employee benefit acts.

**ARTICLE 10 MISCELLANEOUS PROVISIONS**

Where reference is made in this Agreement to a provision of any document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

Owner's representative is: Charles Cunningham  
City Manager  
City of Overton  
(503) 834-3171 (office)

Contractor's representative is: David Gerka  
C. Miller Drilling Co.  
7355 East SH 154  
Winsboro, Texas 75494

Owner agrees to pay Contractor from available funds for satisfactory performance of this Agreement in accordance with the proposal submitted therefor, subject to proper additions and deductions, all as provided in this Agreement, and Owner agrees to make payments on account thereof as provided therein.

Although this Agreement is drawn by Owner, both parties hereto expressly agree and assert that, in the event of any dispute over its meaning or application, this Agreement shall be interpreted reasonably and fairly, and neither more strongly for nor against either party.

This Agreement shall be enforceable in Overton; Texas, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Rusk County, Texas. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

Both parties hereby expressly agree that no claims or disputes between the parties arising out of or relating to this Agreement or a breach thereof shall be decided by an arbitration proceeding, including without limitation, any proceeding under the Federal Arbitration Act (9 USC Section 1-14) or any applicable state arbitration statute.

**EXHIBIT B**

The parties, by execution of this Agreement, bind themselves, their heirs, successors, assigns, and legal representatives for the full and faithful performance of the terms and provisions hereof.

This Agreement is entered into as of the day and year first written above and is executed in at least two (2) original copies, of which one is to be delivered to Contractor and the remainder to Owner.

OWNER *CR Evans, Jr.*

FOR City of Overton, Texas

Printed Name: CR Evans

Title: Mayor

Date Signed: 4-7-2015

CONTRACTOR *David Gerka*

FOR Contractor

Printed Name: David Gerka

Title General Manager

Date Signed: 4-17-15

FOR CITY, ATTEST:

*Rachél Gafford*  
Rachél Gafford, City Secretary



FOR CITY, APPROVED AS TO FORM:

*Blake Thompson*  
Blake Thompson, City Attorney